

3 DIEGO REYES, et al.

4 Plaintiffs,

5 V.

## **BACARDI CORPORATION**

## 7 Defendants.

**CIVIL NOS. 98-1857 (PG)  
99-1116 (PG)**

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U.S. DISTRICT COURT  
SAN JUAN, P.R.

## **REPORT AND RECOMMENDATION**

This is an action for damages brought by Diego Reyes and others<sup>1</sup> (“plaintiffs”) against their employer, Bacardi Corporation (“Bacardi”). Bacardi removed this action from the Commonwealth Court of First Instance, Bayamón Section, pursuant to 28 U.S.C. § 1441(b), as this action arises under federal law, specifically, section 301 of the Labor Management Relations Act, 29 U.S.C. § 185. Plaintiffs seek compensation for work they allegedly performed during their meal period.

15           Bacardi Corporation (“Bacardi”) now moves, pursuant to Rule 56(c) of the Federal Rules  
16 of Civil Procedure, for partial summary judgment in the above consolidated cases. (Docket No.  
17 93). Plaintiffs have neither responded to the Court’s orders since July 16, 2003, nor have they  
18 responded to Bacardi’s motion for summary judgement, thus the Court considers Bacardi’s motion  
19 for summary unopposed. (Docket No. 98).

## **I. Factual Background**

21 All plaintiffs relevant to this action are employed by Bacardi and are members of the  
22 Congreso de Uniones Industriales de Puerto Rico (“CUI”). The CUI and Bacardi are parties to a  
23 collective bargaining agreement (“CBA”), effective from November 14, 1997 to November 13,  
24 2001. (See Docket 1, Exhibit B). The CBA was in effect when the facts giving rise to this action  
25 occurred. *Id.* The collective bargaining agreement provides that all grievances concerning the

<sup>1</sup> Other relevant plaintiffs are: Ramón Soto, Juan C. Ortiz, Carmelo Camerón, Raúl Rivera, Florentino Rivera, Félix Colón, Raúl Calderón, Héctor L. Rodríguez, Ramón Ginés, George Gordon, Luis A. Rodríguez, Ivelisse Martínez, María D. Morales, Erik Figueroa, Manuel O. Figueroa, Alfredo López, Nelson Candelario, Maranat Alicea, and Nelson Jusino.

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2 interpretation of the agreement will be submitted pursuant to the CBA's grievance and arbitration  
 3 procedure. (See Docket 1, Exhibit B, Article VIII ¶ 23). The CBA contains an exception for salary  
 4 disputes, however, which allows either party to file a claim in any court of competent jurisdiction  
 5 without exhausting said grievance procedure. *Id.*

6 The plaintiffs originally filed this action with the Commonwealth Court of First Instance,  
 7 Bayamón Section, (See Docket 1, p.2 ¶ 3) alleging violations of Act 41 of August 17, 1990, as  
 8 amended, P.R. Laws Ann. tit. 29 § 271 *et seq.* ("Law 41"). Specifically, plaintiffs claim that  
 9 Bacardi violated Law 41 insofar as it failed to compensate plaintiffs for work performed during  
 10 their meal period. (See Docket 10, p. 2 ¶ 4). Bacardi successfully removed this action pursuant  
 11 to 28 U.S.C. § 1441(b). (Docket No. 1). Bacardi then moved to consolidate Case No. 99-1116 with  
 12 the present action, Case No. 98-1857. The Court granted Bacardi's motion to consolidate on June  
 13 3, 1999. (Docket No. 19). The salient facts are set forth below in further detail.

14 **II. Standard of Review**

15 A. Summary Judgment Standard

16 Summary Judgment is appropriate when "the pleadings, depositions, answers to  
 17 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no  
 18 genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter  
 19 of law." Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The nonmoving  
 20 party must then "set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ.  
 21 P. 56(e). When deciding a motion for summary judgment, the court must view the record in the  
 22 light most favorable to the party opposing summary judgment, including all reasonable inferences  
 23 in the nonmoving party's favor. See *id.* "If, after canvassing the material presented, the district  
 24 court finds *some* genuine factual issue remains in the case, whose resolution one way or the other  
 25 could affect its outcome, the court must deny the motion." *Anderson v. Liberty Lobby, Inc.*, 477  
 26 U.S. 242, 248 (1986).

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2 B. Local Rule 56(b)

3 Local Rule 56(b), previously Local Rule 311.12, requires an annex to summary judgment  
 4 motions that sets forth a “separate, short and concise statement of material facts as to which the  
 5 moving party contends there is no genuine issue to be tried.” D.P.R. R. 56(b). The nonmoving  
 6 party’s “failure to present a statement of disputed facts, embroidered with specific citations to the  
 7 record, justifies deeming the facts presented in the movant’s statement of undisputed facts admitted.  
 8 Ruiz Rivera v. Riley, 209 F. 3d 24, 28 (1st Cir. 2000). The Court of Appeals for the First Circuit  
 9 has repeatedly held that the district court of Puerto Rico is justified in admitting one party’s  
 10 submitted uncontested facts when the other party does not file disputed facts in compliance with  
 11 Rule 311.12. See, e.g., United Parcel Serv., Inc. v. Flores-Galarza, 318 F.3d 323, 330 (1st Cir.  
 12 2003); Corrada Betances v. Sea-Land Serv., Inc., 248 F.3d 40, 43 (1st Cir. 2001); Ruiz Rivera v.  
 13 Riley, 209 F.3d 24, 27-28 (1st Cir. 2000). “This, of course, does not mean the unopposed party  
 14 wins on summary judgment; that party’s uncontested facts and other evidentiary facts of record  
 15 must still show that the party is entitled to summary judgment.” Torres-Rosado v. Rotger-Sabat,  
 16 335 F.3d 1, 4 (1st Cir. 2003).

17 **III. Legal Analysis**

18 Plaintiffs claim that Bacardi failed to compensate them for work performed during their  
 19 meal period. Law 41 establishes that an employer must allow its employees a meal period of at  
 20 least one hour during regular working hours where the employee is free from all job obligations.  
 21 P.R. Laws Ann. tit. 29 § 271 *et seq.* The CBA modifies this local law, and is controlling in the  
 22 present action. (Docket No. 6). The CBA states, in relevant part: “The Company shall grant all  
 23 those employees who do not work in operations of a continued nature one (1) hour without pay for  
 24 meals. The Company shall grant all those employees working in operations of a continued nature  
 25 half (1/2) hour with pay for meals.” (See Docket 1, Exhibit B, Article IX, ¶ 42). The plaintiffs  
 26 have failed to provide this Court with the specific facts and circumstances that form the basis of  
 27 Bacardi’s failure to provide them compensation.

28 According to Bacardi, it granted plaintiffs one (1) hour for their meal periods, and no

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2 plaintiff worked during this period. (See Docket 93, p. 3 ¶ 1). Bacardi claims that plaintiffs are  
 3 employed “in operations not of a continuing nature,” and, accordingly, did not receive  
 4 compensation for their one hour meal period. (See Docket 93, Exhibit I, p. 1 ¶ 5).

5 If there was evidentiary support for both the plaintiffs and defendant’s respective positions,  
 6 there would be some genuine issues of material fact in dispute precluding entry of summary  
 7 judgment. The plaintiffs, however, failed to file an opposition to Bacardi’s a motion for summary  
 8 judgment and a statement of contested facts. As a result, plaintiffs have deemed admitted the  
 9 following facts: Nos. 1-5 of Bacardi’s statement of uncontested material facts. (See Docket 93, p.  
 10 1-3). Because all material facts in Bacardi’s statement of uncontested material facts are deemed  
 11 admitted, this Court need only determine whether, given the uncontested facts, Bacardi is entitled  
 12 to judgement as a matter of law. Correa-Pagán v. Gulf Chem. Corp., 224 F. Supp. 2d 393, 395  
 13 (D.P.R. 2002). Although plaintiffs’ failure to comply with Rule 56(b) does not automatically  
 14 warrant the granting of summary judgment, “it launches the nonmovant’s case down the road  
 15 toward easy dismissal.” Mendez Marrero, 968 F. Supp at 34.

16 Because plaintiffs’ complaint is vague, and plaintiffs also failed to file an opposition to  
 17 Bacardi’s motion for summary judgment, the Court is uncertain of the harm alleged by plaintiffs:  
 18 Were plaintiffs required to intermittently work during their one hour meal period? Were they  
 19 required to return to work before they had taken one full hour? Both? In addition, the record is  
 20 void of any specific allegations made by plaintiffs that point to how and when Bacardi violated  
 21 Law 41, or the terms and conditions of the parties’ CBA. “The Court is free to grant summary  
 22 judgment in favor of the defendant if the plaintiff’s claim rests merely upon conclusory allegations,  
 23 improbable inferences, and unsupported speculation.” Suárez v. Pueblo Int’l Inc., 229 F.3d 49, 53  
 24 (1st Cir. 2000) (citing Medina-Muñoz v. R.J. Reynolds Tobacco Co., 896 F.2d 5, 8 (1st Cir. 1990)).

25 In light of the plaintiffs’ failure to comply with Rule 56(b), the Court must grant Bacardi’s  
 26 motion for summary judgment as these admissions alone prevent a finding that Bacardi failed to  
 27 adequately compensate plaintiffs. It is uncontested that all relevant plaintiffs were employed “in  
 28 operations not of a continuing nature” and that Bacardi allowed all relevant plaintiffs one full hour

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2 in which to take their meals. (See Docket 93, p. 2 ¶ 2). Thus, plaintiffs have failed to establish a  
3 genuine issue as to any material fact and Bacardi is entitled to a judgment as a matter of law.

4 **WHEREFORE**, this Court **RECOMMENDS** that Defendants' partial motion for summary  
5 judgment (Docket No. 93) be **GRANTED** as to the following plaintiffs: Ramón Soto, Juan C.  
6 Ortiz, Carmelo Camerón, Raúl Rivera, Florentino Rivera, Félix Colón, Raúl Calderón, Héctor L.  
7 Rodríguez, Ramón Ginés, George Gordon, Luis A. Rodríguez, Ivelisse Martínez, María D. Morales,  
8 Erik Figueroa, Manuel O. Figueroa, Alfredo López, Nelson Candelario, Maranat Alicea, and  
9 Nelson Jusino.

10 Under the provisions of Rule 72(d), Local Rules, District of Puerto Rico, any party who  
11 objects to this report and recommendation must file a written objection thereto with the Clerk of  
12 the Court within ten (10) days of the party's receipt of this report and recommendation. The written  
13 objections must specifically identify the portion of the recommendation, or report to which  
14 objection is made and the basis for such objections. Failure to comply with this rule precludes  
15 further appellate review. See Thomas v. Arn, 474 U.S. 140, 155 (1985), reh'g denied, 474 U.S.  
16 1111 (1986); Davet v. Maccorone, 973 F. 2d 22, 30/31 (1st Cir. 1992).

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18 **SO RECOMMENDED**

In San Juan, Puerto Rico, this 20th of November, 2003.

  
A handwritten signature in black ink, appearing to read "GUSTAVO A. GELPI". Below the signature, the initials "U.S.M.J." are handwritten.

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**GUSTAVO A. GELPI**  
United States Magistrate-Judge